

## VBAGS General Terms and Conditions Relating to the Supply of Goods and/or Services

### 1. INTRODUCTION

- A. All goods and/or services supplied to Vodacom Business Africa Group Services (Pty) Ltd and/or any of its affiliates ("VBAGS") by the SP shall be made and supplied on the following terms and conditions only. VBAGS is involved in telecommunications activities in the provision of managed network and other telecommunication services in Europe and Africa.
- B. The SP operates and manages telecommunications services and network in a designated jurisdiction.
- C. VBAGS wishes to appoint the SP as a subcontractor where the local jurisdiction requires a licensed operator to render the specific services. **SUCH SERVICES WILL INCLUDE BUT WILL NOT BE LIMITED** to the provision of corporate connectivity, supply, installation and commissioning of equipment.
- D. All Goods and Services supplied to VBAGS by the SP shall be made and supplied in accordance with these Terms and Conditions. These Terms and Conditions shall take precedence over any terms and conditions which may be contained in the SP's acceptance of order, or other SP documentation, and may only be altered with the express written consent of VBAGS. Any conflicting statements in any acceptance of order or other documentation issued by the SP shall be null and void, unless such special terms have been expressly agreed to in writing by VBAGS.

### 2. DEFINITION AND INTERPRETATION

- 2.1. Save as otherwise set out in relation to a particular Purchase Order, capitalised terms not otherwise defined in these Terms and Conditions, shall for the purposes of this Agreement have the meaning assigned to them under this Section:

**"Agreement"** means the Terms and Conditions together with the Purchase Orders;

**"Change"** means a change to the Terms and Conditions, a Purchase Order, or any Service;

**"Charges"** means the charges for the Goods and/or Services to be paid by VBAGS to the SP, as more particularly set out in the Purchase Orders;

**"Confidential Information"** shall have the meaning set out in Section 17.1 below;

**"Customer"** means VBAGS' end customer;

**"Customer Sites"** means at the end Customer's premises where the Goods and/or Services are delivered and where the installation of such Goods and/or Services takes place;

**"Due Date"** means the date on which an invoice is due for payment, as set out at Section 8.3 of these Terms and Conditions or as otherwise set out in the relevant Purchase Order;

**"Effective Date"** means in relation to these Terms and Conditions or any Purchase Order, the date of signature of such document by both Parties. In case of signature in counterparts, the date of the later signature will apply;

**"Goods"** means the goods as listed in specific Purchase Orders;

**"Link"** means a telecommunications connection over which the Services are delivered as more particularly described in the relevant Purchase Order;

**"Minimum Term"** means the minimum period for which Goods and/ or Services shall be provided, as more particularly set out in the relevant Purchase Order;

**"Network(s)"** means a communications system or telecommunications network;

**"One-Time Charges"** means Charges, which are due in respect of installation or other one-time events, as more particularly set out in the relevant Purchase Order;

**"Payment"** means the receipt of cleared funds, in the currency of the invoice, in the bank account designated on an invoice or other demand for payment;

**"Party"** means VBAGS or the SP;

**"Parties"** means VBAGS and the SP s collectively;

**"Purchase Order"** means a contractual document incorporated into this Agreement by reference and/or signature on behalf of both Parties, which sets out details of the Goods and Services to be purchased by VBAGS for the benefit of its Customer in the SP territory;

**"Ready for Service Date"** means the date on which particular Services are ready to be delivered under this Agreement, following satisfactory installation of the Services and satisfactory completion of applicable acceptance tests;

**"Recurring Charges"** means Charges, which are due at regular intervals throughout the Term, whether monthly, quarterly or annually as more particularly set out in the relevant Purchase Order;

;

**"Scheduled Ready for Service Date"** means the date set out in the relevant Purchase Order, on which the Parties anticipate that the

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installation of the Services and all agreed acceptance tests will have been completed, and that VBAGS will be in a position to start providing the relevant Services;

**“Service(s)”** means the services, including the resale of equipment (if applicable), which the SP provides on behalf of VBAGS under the terms of this Agreement, as more particularly described in specific Purchase Orders;

**“the SP”** means the Company appointed by VBAGS to provide goods and/or services in a specific country on behalf of VBAGS;

**“Site”** means a location at which the Goods and/or Services will be provided in the SP jurisdiction to a VBAGS Customer;

**“Term”** means the Minimum Term;

**“Terms and Conditions”** means this Agreement excluding the Purchase Orders; and

**“Variable Charges”** means usage Charges for the Services, as more particularly described in the relevant Purchase Order.

2.2. References to Articles, Sections and Schedules are references to articles, sections and schedules of these Terms and Conditions.

2.3. Words importing the singular shall include the plural and vice versa and words importing a gender include every gender.

2.4. The Purchase Orders form part of this Agreement and any reference to the Agreement includes the Purchase Orders.

2.5. In the event of a conflict between the Terms and Conditions and a Purchase Order, the terms of the relevant Purchase Order shall take priority in relation to the Services to which such Purchase Order refers. Where a customised Service description or custom Service Levels are set out in a particular Purchase Order, these will take precedence in the event of a conflict over the Service descriptions and/or Service Levels set out in a generic VBAGS Service document.

### **3. PROVISION OF GOODS AND/OR SERVICES**

3.1. The SP shall provide the Goods and/or Services on behalf of VBAGS in accordance with these Terms and Conditions and the terms of the relevant Purchase Orders.

3.2. The SP shall comply with all applicable laws in connection with the provision of the Goods and/or Services, including the obtaining of appropriate licenses.

3.3. The Parties shall work in good faith to agree appropriate acceptance testing procedures for the Services and any equipment, based on the SP standard acceptance testing

methodologies. Acceptance will be deemed to occur on the earlier of satisfactory completion of the acceptance tests or use of the Service being tested.

3.4. The SP shall supply to VBAGS the Goods and/or Services and the quantities thereof on VBAGS' Purchase Order.

### **4. QUALITY OF SERVICES AND AVAILABILITY OF GOODS**

4.1. The SP shall –

4.1.1. in the absence of a specification or sample, ensure that all Goods and/or Services supplied shall be supplied to normal industry standards;

4.1.2. ensure that it provides to VBAGS Goods and/or Services of the highest standard of quality and service;

4.1.3. at all times give full commitment to the requests and needs of VBAGS; and

4.1.4. ensure the availability of Goods and/or Services for delivery.

### **5. DELIVERY**

5.1. The Goods and/or Services shall be delivered by the SP to VBAGS by road and delivery shall be presumed until the contrary is proved to have been effected when the Goods and/or Services are offloaded at VBAGS' designated site(s) and a delivery note has been signed by VBAGS, provided that when the carrier has been nominated by VBAGS, delivery shall be presumed until the contrary is proved to have taken place at the time that the Goods and/or Services are handed to the nominated carrier and a delivery note has been signed by the carrier.

5.2. Subject to section 5.3 below, all risk in and to the Goods and/or Services shall pass to VBAGS upon delivery at the designated sites.

5.3. When delivery of the Goods and/or Services is spread over a period, which has been agreed by VBAGS, each separate delivery thereof shall be invoiced when dispatched or delivered, whichever is the later. Each invoice shall be treated as a separate account and shall be payable in terms of Section 8. The SP shall only deliver to VBAGS Goods and/or Services which have in fact been ordered by VBAGS in respect of which order an official purchase order number has been issued by VBAGS.

5.4. Where there is a shortage in any Goods and/or Services delivered to VBAGS or where the Goods and/or Services so delivered are delivered in a damaged/faulty condition or where the quality of the Goods and/or Services is not to VBAGS' satisfaction, VBAGS shall give written notice to the SP. In the event that the

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Goods and/or Services are not replaced within five (5) working days of the aforesaid notification, VBAGS shall be entitled to deduct the purchase price pertaining to those Goods and/or Services from the Purchase Order price. Should VBAGS fail to give such notice, VBAGS shall have no claim in respect of any alleged shortages or damage and the Goods and/or Services shall be presumed to have been delivered in a complete and undamaged state unless proved otherwise.

- 5.5. The SP shall deliver the ordered Goods and/or Services to the designated site(s), within seven (7) working days of the relevant Purchase Order being issued by VBAGS.
- 5.6. Where the SP is unable to effect delivery within the aforesaid seven (7) working days, prior arrangements shall be made with VBAGS' procurement division, failing which VBAGS shall be entitled to cancel the relevant Purchase Order, provided that such cancellation is in writing.
- 5.7. Any extension of time granted by VBAGS in respect of the time period for delivery of the Goods and/or Services shall be reduced to writing and signed by VBAGS.

### **6. OWNERSHIP AND BENEFIT**

- 6.1. Ownership and benefit in the Goods and/or Services shall be passed to VBAGS on delivery thereof provided that in the event of an incorrect delivery of Goods and/or a delivery of Goods and/or Services contemplated in Section 5.4 above, ownership shall remain in and vest with the SP.

### **7. VBAGS 'S OBLIGATIONS**

- 7.1. VBAGS shall pay for the Goods and/or Services as more particularly set out in this Agreement.
- 7.2. Where VBAGS engages the SP to render services at a site that is under the control of a Customer of VBAGS, then VBAGS shall ensure that its Customers comply with all applicable laws in connection with their receipt and use of the Goods and/or Services to be rendered by the SP as a subcontractor of VBAGS. VBAGS shall ensure that its Customer takes all reasonable steps to ensure that the Goods and/or Services are not used for any improper, immoral or unlawful purposes.
- 7.3. To enable the SP to perform its obligations and/or exercise its rights under this Agreement as a subcontractor of VBAGS rendering services at a Customer Site, VBAGS shall ensure that its Customer shall (a) make available facilities and/or information; and (b) grant or procure the grant to the SP of such rights of access to each VBAGS Customer Site

as may be reasonably required by the SP from time to time.

- 7.4. VBAGS shall be responsible for the supply and operation of all elements required to receive the Services on its side of the meet-point.
- 7.5. VBAGS will ensure that contractually its Customer shall be responsible for providing a suitable and secure environment, in compliance with the equipment manufacturer's requirements, free from environmental hazards and shall keep such Customer premises equipment free from all liens, charges, and encumbrances. VBAGS will ensure contractually that its Customer shall not remove or attempt to remove any stickers or other markings, identifying such equipment as the property of the SP or its subcontractors or other agents.

### **8. CHARGES, BILLING AND PAYMENT**

- 8.1. Invoices shall be delivered by email in accordance with the notice provisions set out in this agreement. No predated or post-dated invoices shall be accepted by VBAGS unless otherwise agreed in writing by VBAGS.
- 8.2. The prices for the Goods and/or Services shall be those as listed on the Purchase Orders. The aforesaid prices shall remain fixed. Any price increases shall require VBAGS prior written consent. Goods and/or Services ordered before an agreed price increase shall be charged at the then prevailing price prior to such increase.
- 8.3. Save as otherwise set out in the relevant Purchase Order, Charges for Goods and/or Services will be invoiced as set out in this Section. Invoices will be emailed to VBAGS on the central email address for all billing correspondence, which is [VBABilling@vodacom.com](mailto:VBABilling@vodacom.com), for receipt of invoices set out in the notice provisions of these Terms and Conditions, or such other email ID as may be notified in a particular Purchase Order for particular Goods and/or Services. (a) Invoices for one-time Charges (i.e. installation and interconnection Charges) will be raised on or before the Scheduled Ready for Service Date for the relevant Services; (b) invoices for recurring Charges (i.e. regular period Charges for the Services) will be invoiced monthly in advance; and (c) usage based or variable Charges will be invoiced monthly in arrears. The Due Date for all payments will be sixty (60) days after the end of the calendar month during which such Goods and/or Services were provided following receipt of a valid invoice.
- 8.4. Invoices will be received by the 10th of every ensuing month. Failure to submit an invoice within the specified timeframe will result in the

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postponement of payment processing until the next month-end payment run.

8.5. The SP is solely authorised to retroactively invoice for Services rendered up to a maximum of 120 days prior to the date of the invoice.

8.6. VBAGS must present any disputes regarding the correctness of an invoice in writing before the Due Date or within ten (10) days of the end of the billing period in question, whichever occurs first or hereby irrevocably waives the right to challenge the Charges subsequently. VBAGS shall provide the SP with documentation that demonstrates the improper charge. The Parties shall then use their best efforts to resolve such dispute as expeditiously as possible. If such dispute, or any portion thereof, presented in writing is found to be valid, then the SP shall credit the disputed amount against the next invoice of charges, or where appropriate, it shall be refunded. VBAGS agrees that it shall not be entitled to withhold any Payment as a remedy for unsatisfactory quality or service standards.

8.7. Unless otherwise agreed by the Parties in writing, all Charges are as per the currency stipulated in the Purchase Order and are exclusive of all applicable taxes other than taxes assessed on the income of the SP, including but not necessarily limited to value added tax, sales taxes, and duties or levies imposed by any authority, government or government agency; all of which shall be paid promptly when due by VBAGS, and who agrees to indemnify and hold the SP harmless from any liability in respect thereof.

8.8. Any proposed adjustments to pricing under this Agreement shall:

8.8.1 be subject to prior written justification from the SP, which includes the basis for the increase and supporting market data;

8.8.2 remain within an agreed-upon range that reflects reasonable industry standards; and

8.8.3 be subject to VBAGS' right to review, dispute, and negotiate any proposed increases before implementation.

8.9 No unilateral price increases shall be applied without the Payer's prior written consent.

8.10 In the event that the SP changes the designated account without giving VBAGS at least 10 (ten) Business Days' prior written notice of such change, VBAGS shall not be liable for late payment.

8.10.1 If any deductions or withholdings are required by law to be made from the

Charges, VBAGS shall pay the SP such amount as will leave the SP with the same amount as it would have been entitled to receive in respect of the Charges in the absence of any such requirement to make a deduction or withholding. The SP shall subsequently issue a credit to VBAGS, as compensation for the deduction or withholding made by VBAGS, to the extent that:

8.10.2 VBAGS has paid the Charges in full, in accordance with the provisions of this Section; and 8.11.2 the government which mandated the relevant withholding is the government of a country which has a bilateral tax treaty with the SP's home jurisdiction pursuant to which the SP is entitled to obtain a credit against its home jurisdiction income taxes (a "Friendly Jurisdiction"); and

8.10.3 VBAGS provides to the SP no later than 30 (thirty) days after the date on which the relevant deduction or withholding was made, appropriate written evidence from the taxing authorities in the Friendly Jurisdiction, to enable the SP to obtain a credit against its home jurisdiction income taxes. The credit due to VBAGS from the SP in these circumstances shall be limited to the credit, to which the SP is entitled against its home jurisdiction's income taxes pursuant to the relevant deduction or withholding.

8.11 Should value added tax or any analogous tax in any relevant jurisdiction ("VAT") be chargeable in respect of any amount payable in terms of this Agreement, the relevant Party shall provide the other with an invoice which meets the conditions imposed on it by the tax legislation in the relevant jurisdiction ("Tax Invoice"), which will allow the other Party to obtain relief from such tax if a relief procedure is available. Provided that the relevant Party is in receipt of such a Tax Invoice, such Party shall pay to the other the VAT properly chargeable in respect of such payment. VAT shall be charged according to the rate applicable at the time of invoice in respect of invoices issued by the SP to VBAGS. If either Party has incorrectly determined the amount of VAT chargeable to the other, then the matter shall be corrected as follows:

8.11.1 Where a Party has overpaid any amount, the other Party will repay such amount to it plus interest at the rate provided for in Section 8.6, as well as any related costs, and shall also provide it with a corrected Tax Invoice.

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- 8.11.2 Where a Party has underpaid any amount, such Party shall pay the outstanding amount to the other upon receipt of a corrected Tax Invoice.
- 8.11.3 The payments referred to in Section 8.11.1 and 8.11.2 shall be made within thirty (30) days of it being determined that the amount of VAT was incorrectly charged.
- 8.12 Save as otherwise set out in a Purchase Order hereto, payments by VBAGS to the SP will be made from bank accounts in Europe. Each Party shall only be expected to pay the bank charges of its own bank.

### **9. TERM**

- 9.1. These Terms and Conditions shall act as a framework set of terms and conditions for the Goods and/or Services described in the Purchase Orders. These Terms and Conditions may not be terminated for so long as there are Goods and/or Services being provided under Purchase Orders, which have not been terminated.
- 9.2. The Goods and/or Services shall be provided for the term set out in the relevant Purchase Order; and/or until terminated in accordance with the provisions of the relevant Purchase Order; and/or of Section 10; whichever is earlier.
- 9.3. To the extent that there are no Goods and/or Services being provided under any Purchase Orders, these Terms and Conditions may be terminated in full by three months written notice from one Party to the other.

### **10. SUSPENSION AND TERMINATION**

- 10.1. Subject to the provisions of Section 10.2 below or the contrary terms of a particular Purchase Order, Purchase Orders shall be subject to termination on no less than 30 (thirty) days prior written notice from one Party to the other, such notice to expire at the end of the Minimum Term.
- 10.2. Without prejudice to any other rights it may have, either Party may immediately terminate these Terms and Conditions or any Purchase Order upon written notice to the other Party in the event that the other Party:
- 10.2.1. enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency); or
- 10.2.2. otherwise ceases to pay its debts as they fall due.
- 10.3. Either Party shall be entitled to terminate this Agreement as a result of the material breach by the other Party of such other Party's

obligations under this Agreement, as more particularly set out in this Section. In circumstances where a Party (the "breaching Party") has committed a material breach of this Agreement, the non-breaching Party shall be entitled to give notice in writing requiring the breaching Party to remedy such breach (to the extent that the alleged breach is capable of remedy) no later than seven (7) days after the date of deemed receipt of the relevant notice. To the extent that that the breach has not been remedied within such seven (7) day period or is a breach not capable of remedy (e.g. unauthorised disclosure by the breaching Party of Confidential Information of the non-breaching Party), the non-breaching Party shall be entitled to terminate this Agreement or, at the discretion of the non-breaching Party, the affected Purchase Order only, subject to immediate notice in writing to the breaching Party from the non-breaching Party. The non-breaching Party may also claim specific performance. The before mentioned remedies are without prejudice to the non-breaching Party's rights to claim damages and such other rights as the non-breaching Party may have at law.

- 10.4. Proper termination of this Agreement shall not relieve either Party with respect to any obligations outstanding to be performed at the date of termination or in respect of the obligations as to confidentiality described in this Agreement. The SP will refund to VBAGS any outstanding sums, such as advanced payments, credits or security deposits held, related to the terminated Services but not used by the date of termination of such Services. The Parties undertake to use all reasonable endeavours to settle any invoice disputes prior to such date.

### **11. WARRANTY AND LIABILITY**

- 11.1. VBAGS shall not be liable to the SP for any loss, cost and/or damages including, but not limited to, direct and/or consequential loss, arising from these Terms and Conditions. This exclusion of liability shall relate to claims of breach of contract as well as for alleged negligence on the part of VBAGS.
- 11.2. The SP indemnifies and shall keep VBAGS indemnified against all losses, liabilities, claims, costs and expenses that may result from loss of or damage to any property, or injury to or the death of any person that may arise out of any act or omission or negligence of the SP in connection with the Purchase Order.
- 11.3. The SP indemnifies and shall keep VBAGS indemnified against any claims that may be made against VBAGS by any third party in connection with the Goods and/or Services, whether such claims are in respect of damage

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to property, consequential loss, personal injury or death.

- 11.4. The SP warrants that in performing the Services, it shall exercise the reasonable skill and care of a competent telecommunications services provider experienced in the provision of similar Services. To the extent permitted by applicable law, no other warranty shall be implied or given in connection with the provision of the Services.

### **12. CHANGE CONTROL PROCEDURE**

- 12.1. This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each Party hereto (each an "Agreed Change"). A representative of each Party shall keep copies of all Agreed Changes. This process, in respect of which more detail is set out below, shall be known as the "Change Control Procedure".
- 12.2. No Change shall be of any effect unless and until it has become an Agreed Change in accordance with Section 12.1 above.
- 12.3. Pending written agreement between the Parties in respect of any variation or alteration of this Agreement or any Service, the SP shall continue to provide the Services in accordance with the provisions of the Agreement in its original form.

### **13. HEALTH AND SAFETY**

The Parties acknowledge that health and safety is of paramount importance within their respective organisations. To the extent that the SP will perform Services for VBAGS at a VBAGS Customer Site, whether through itself or its subcontractors or other agents, including but not limited to installation services, VBAGS will contractually ensure that its Customers supply a copy of the Customer's rules regarding health and safety and any relevant national legislation relevant to the provision of the relevant Services no less than two (2) weeks prior to the provision of the relevant Services (the "Local Health and Safety Rules"). The SP agrees to construct a safe method of working in connection with the provision of the Services, which is compliant with the Local Health and Safety Rules and made known to the SP from time to time by VBAGS' Customers.

### **14. CODE OF ETHICAL CONDUCT**

- 14.1. The Supplier shall become fully acquainted and comply with VBAGS's Code of Ethical Purchasing which terms and conditions are available on [http://www.vodafone.com/content/dam/sustainability/pdfs/vodafone\\_code\\_of\\_ethical\\_purchasing\\_with\\_guidance.pdf](http://www.vodafone.com/content/dam/sustainability/pdfs/vodafone_code_of_ethical_purchasing_with_guidance.pdf)

- 14.2. It is hereby understood by both parties that by signing this contract the Supplier is fully aware and agrees with the terms of the Code of Ethical Purchasing as contained in the link above.

- 14.3. In case the Supplier prefers to have a physical copy of the Code of Ethical Purchasing, the Client undertakes to provide same upon request.

### **15. ASSIGNMENT / NOVATION / SUBCONTRACTING**

The SP shall not without prior written consent of VBAGS sell, assign, novate, transfer or dispose of any or all of its rights or obligations hereunder. Such consent shall not be unreasonably withheld or delayed. VBAGS may however assign this Agreement to its affiliate by notifying the SP.

- 15.1. In the event that VBAGS has consented in writing to the placing of subcontracts by the SP, a copy of each sub-contract shall be sent by the SP to VBAGS immediately upon signing and prior to the delivery of any goods and/or services by the sub-contractor. In the case of sub-contracting, the SP shall at all times be and remain principal and shall be and remain fully responsible and liable for all its obligations arising from these Terms and Conditions and VBAGS' Purchase Orders.

### **16. FORCE MAJEURE**

No failure or omission by either Party to carry out or observe any terms and conditions of this Agreement, except for any obligations to make Payment, shall give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from a cause of force majeure, an act of Government or any other cause beyond the reasonable control of that Party. If such delay or failure continues for at least ninety (90) days, either Party will be entitled to terminate this Agreement by notice in writing to the other Party

### **17. CONFIDENTIALITY AND PUBLICITY**

- 17.1. Each Party agrees that the existence and terms of this Agreement are confidential and that all information and data, of any nature, provided by one Party to another hereunder shall remain the property of the disclosing Party and be treated as fully confidential by the receiving Party and shall be used solely for the purpose for which it is supplied unless the disclosing Party has identified the data as being non-confidential ("Confidential Information").
- 17.2. Save as otherwise expressly permitted by this Section 17, neither Party shall divulge Confidential Information other than to those employees (including employees of SPs) and professional advisors, who have a need to know

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the relevant information, and shall ensure that such persons are aware of and comply with these obligations as to confidentiality. Each Party shall be responsible vis-à-vis the other Party for any subsequent disclosure made by an employee, SP company or professional advisor, which would have been unauthorised under the terms of this Agreement had it been made directly by such Party.

17.3. The provisions of Sections 17.1 and 17.2 shall not apply to any information to the extent that it is (a) trivial or obvious; (b) already in the other Party's possession other than as a result of Section 17.1 and/or 17.2; (c) independently developed by the receiving Party prior to the execution of this Agreement; (d) in the public domain through no fault of the receiving Party; or (e) disclosed by the receiving Party pursuant to judicial or governmental request, requirement or order, where lawfully required by such authorised institutions. Where disclosure is made pursuant to subsection (e), the receiving Party shall take reasonable steps to give the disclosing Party sufficient prior notice to contest such request, requirement or order and disclose strictly only that part of the information, which has been so requested.

17.4. Confidential Information shall remain the property of the disclosing Party and Confidential Information, including all copies thereof, shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. The confidentiality obligations in this Agreement shall survive its termination by a period of five years.

17.5. No public statements or announcements relating to this Agreement shall be issued by either Party without the prior written consent of the other Party, such consent is not to be unreasonably withheld or delayed.

### **18. NOTICES**

18.1. Any notice to be given under this Agreement shall be in writing and either be delivered personally by reputable international courier, confirmed in writing by such courier as having been delivered; or (intra South Africa only) sent by first class recorded delivery post with acknowledgement of receipt; or sent by facsimile or email (subject to compliance with the receipt confirmation mechanisms set out in this Section 18).

18.2. The notice shall be deemed to be delivered:

18.2.1. if delivered by courier, when delivered, as evidenced by the courier's statement of delivery;

18.2.2. if sent by first class recorded delivery (intra South Africa only), as evidenced by the delivery record of the South African Post Office; and

18.2.3. if sent by electronic mail or facsimile, at the time the receiving Party explicitly acknowledges receipt (for avoidance of doubt, an automatically generated response will not be considered as acknowledgement of receipt).

18.3. The address, including e-mail addresses and fax numbers, for notices by each Party shall be the addresses set out below or such other address(es) for notices notified to the other Party in accordance with the terms of this Section 18:

Addresses for notices:

#### **VBAGS**

80 CHEAPSIDE, LONDON, EC2V 6EE  
UNITED KINGDOM

#### **THE SP**

DETAILS AS SET OUT IN PURCHASE  
ORDER

### **19. INTELLECTUAL PROPERTY**

19.1. Each Party agrees not to display or use any of the other Party's trade names, service marks, brands or trademarks, and shall not permit the same to be used or displayed by any third party, without the prior written consent of that other Party.

19.2. It is expressly understood by each Party that the trade names, service marks, brands, trademarks of the other Party, together with all and any intellectual property rights pertaining to that Party's business, are proprietary to that Party and nothing in this Agreement constitutes the grant of a general licence to use the said trade names, service marks, brands trademarks or other intellectual property rights.

19.3. The SP indemnifies and shall keep VBAGS indemnified against any claim for infringement of intellectual property rights in connection with any goods and/or services supplied by the SP to VBAGS and against any and all costs, expenses and damages which VBAGS may incur or become liable for as a result of such infringement.

19.4. VBAGS shall give to the SP prompt notice in writing of any claim being made or action threatened or brought against VBAGS and will permit the SP, at the SP's own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

### **20. GOVERNING LAW AND DISPUTE RESOLUTION**



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- 20.1. In the event of a dispute arising between the Parties, the Parties agree that they will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between management representatives of the Parties with authority to settle the dispute.
- 20.2. If the Parties are unable to resolve the deadlock or dispute informally between themselves, then prior to submitting any remaining dispute to arbitration, the Parties will try to resolve the remaining dispute with the support of an independent mediator accredited by the UK Centre for Effective Dispute Resolution ("CEDR"), using CEDR's Model Mediation Procedure. The costs of such mediation shall be borne equally by the Parties. Any resolution of the dispute achieved through such mediation must be set out in a document signed by both Parties if it is to be binding. Such document may then be filed as a consent order with a court of appropriate jurisdiction.
- 20.3. In the event that mediation does not result in a mutually acceptable resolution to the dispute within sixty (60) calendar days after the start of negotiations (or such longer period as the Parties may agree), or if delaying the onset of substantive legal proceedings might prejudice the rights of either Party, either Party shall be entitled either to submit such residual dispute for final settlement to the courts of England and Wales or under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by one or more arbitrators appointed in accordance with the said rules. The other Party shall not contest the election of the English courts and/or arbitration on grounds of inconvenient forum or at all. Where one Party has elected to resolve a dispute using arbitration rather than the courts of England and Wales, either Party shall have recourse to and both Parties agree to be bound by the pre-arbitral referee procedure of the ICC in accordance with its Rules for a Pre-Arbitral Referee Procedure. Any procedure followed pursuant to the operation of this Section will be held at a neutral site in London, England, and conducted in the English language. The arbitrator will determine issues of arbitrability, including the applicability of any statute of limitation, but may not limit, expand or otherwise modify the terms of the Agreement. The arbitrator's decision and award will be in writing, setting forth the legal and factual basis. The arbitrator may in appropriate circumstances provide for injunctive relief (including interim relief). An arbitration decision and award will only be subject to review because of errors of law. The arbitrator shall be entitled to make an award of costs to the prevailing Party. The

Parties, other participants and the arbitrator will hold the existence, content and result of arbitration in confidence, except to the extent necessary to enforce a final settlement agreement or to obtain and enforce a judgment on an arbitration award. The language to be used in the arbitration procedure shall be English.

### **21. MISCELLANEOUS**

- 21.1. Any Article, Section, Paragraph or any other provision of this Agreement which is, or becomes, illegal, invalid or unenforceable shall be severed herefrom and shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof, which provisions shall be severed from any illegal, invalid or unenforceable section or other provision of this Agreement and otherwise remain in full force and effect. No waiver by either Party to any provisions of this Agreement shall be binding unless made expressly and confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it relates to and shall not apply to any subsequent or other matter, non-compliance or breach.
- 21.2. These Terms and Conditions and the Purchase Orders represent the entire understanding between the Parties in relation to the matters dealt with herein and supersedes all previous covenants and representations made by either Party, whether oral or written.
- 21.3. Nothing herein contained shall be deemed to constitute a partnership, agency, joint venture or employment between the Parties hereto, and neither Party shall have the authority or power to bind, or contract in the name of or to create a liability against, the other in any way for any purpose.
- 21.4. Neither of the Parties has entered into these Terms and Conditions or any Purchase Order in reliance upon any representation, warranty or undertaking by or on behalf of any other Party, which is not expressly set out in these Terms and Conditions or the relevant Purchase Order. Neither Party shall have any remedy in respect of any misrepresentation or untrue statement made by any other Party hereto unless and to the extent that the claim lies for breach of warranty under this Agreement (save that this Section shall not exclude any liability for fraudulent misrepresentation).
- 21.5. Each Party hereby undertakes that it will at the request and expense of the other Party do all such further things and execute all such further documents as the other Party may from time to time require for the purpose of confirming the



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other Party's rights pursuant to this Agreement and/or giving effect to the provisions of this Agreement.

21.6. These Terms and Conditions and any Purchase Order may each be executed in any number of counterparts, each of which, when executed shall be an original and all the counterparts together shall constitute one and the same instrument.

21.7. Nothing in this Agreement expressly or impliedly provides any third party (save for the Parties' permitted successors and assignees) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

21.8. The authentic language of this Agreement is English. In the event of a conflict between this Agreement and any translation, the English version will take precedence.

21.9. No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

21.10. No indulgence which either Party ("the Grantor") may grant to the other ("the Grantee") shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee which may have arisen in the past or which might arise in the future.

### **22. SANCTIONS AND TRADE CONTROL**

22.1 Each Party shall, in the context of the Agreement:

22.1.1 comply with all economic, trade and financial sanctions laws, regulations, embargoes or restrictive measures administered ("Sanctions"), as well as all trade control laws and regulations ("Trade Control Laws") enacted or enforced by the governments of the United Kingdom, European Union, United States of America and any other relevant country;

22.1.2 not knowingly do anything which may cause the other Party or members of its group to breach Sanctions or Trade Control Laws;

22.1.3 provide such assistance, documentation and information to the other party as that Party may reasonably request, including but not limited to, end customer information, destination, on-selling, re-selling and intended use of goods or services;

22.1.4 notify the other Party in writing as soon as it becomes aware of an actual or potential investigation/breach in relation to the applicable laws or any material change in the status of any of the parties to this agreement in respect of;

(i) Sanctions status e.g. the inclusion on a Sanctions list in any applicable jurisdiction (as stated in 22.1.1 above);

(ii) Trade Control status e.g. becoming listed on a restricted parties list;

22.1.5 have the right to terminate this agreement if any of the provisions of this clause 22 are breached.

### **23. COMPLIANCE WITH THE RELEVANT REQUIREMENTS - ANTI-BRIBERY (MANDATORY)**

23.1. The SP (and any natural person or legal persons the SP uses for the supply of products or performance of services in connection with this Agreement, including employees, agents, consultants, contractors and subcontractors) shall:

23.1.1. comply with all applicable law relating to the combatting of bribery and corruption, money-laundering and terrorism including:

i) The SA Prevention and Combating of Corrupt Practices Act 2004

ii) The UK Bribery Act 2010

iii) The US Foreign Corrupt Practices Act

("Applicable Law")

a) not do or omit to do anything likely to cause VBAGS to be in breach of any such Applicable Law;

23.1.2. not give, offer, promise, receive, or request any bribes, including in relation to any public official;

23.1.3. maintain throughout the term of this Agreement a programme designed to ensure compliance with the Applicable Law by the Supplier, including an education and training programme and measures reasonably calculated to prevent and detect violations of the Applicable Law;

23.1.4. allow VBAGS, whether itself or through an agent, to conduct an audit of records and information held by the SP or its sub-contractors or any other relevant person in relation to the performance by the SP of its obligations under this Agreement;

23.1.5. if requested and at SP's reasonable cost, provide VBAGS sufficient reasonable assistance to enable VBAGS to perform any actions required by any government or agency in any jurisdiction for the purpose of compliance with any Applicable Law or in connection with any investigation relating to the Applicable Law;

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- 23.1.6. maintain adequate internal accounting controls and reasonably detailed books, records and accounts in respect of the supply of products or performance of services to VBAGS;
- 23.1.7. only be paid by VBAGS, for goods delivered or services performed, by wire transfer or other traceable instrument to a bank account in the SP's name;
- 23.1.8. promptly notify VBAGS of any allegation of fraud, bribery or corrupt or unlawful practices made against the SP in court, arbitration or administrative proceedings, or any investigation commenced in respect of such allegations; at any time during the term of this Agreement; and
- 23.1.9. ensure that any natural or legal person external to the SP who is performing services in connection with this Agreement does so only based on a written contract, which secures from such persons terms equivalent to those imposed on the SP in this Section. The SP shall be responsible for the observance and performance by such persons of these terms, and shall be directly liable to VBAGS for any breach.
- 23.2. The SP hereby indemnifies VBAGS and its directors, officers, employees, agents and affiliates against all losses, which they have suffered as a result of breach of this Section by the SP.
- 23.3. If VBAGS has reasonable apprehension, held in good faith, that an act prohibited under the above-mentioned Applicable Law has occurred either directly or indirectly by the SP, then the SP shall cooperate in good faith with VBAGS in determining whether such a violation occurred.
- 23.4. If VBAGS (acting in good faith) determines that there has been a breach by the VBAGS of this Section, such a breach shall be deemed a material breach of this Agreement, and VBAGS shall have the right to terminate this Agreement without prejudice to VBAGS' rights under this Agreement or at law.